

DEPARTMENT OF STATE REVENUE

04-20160658.LOF

Letter of Findings: 04-20160658
Use Tax
For the Years 2011, 2012, 2013, and 2014

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business' purchases were properly assessed additional use tax as Business did not provide documentation to show that purchases made were otherwise exempt from tax.

ISSUE

I. Use Tax - Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-2.5-5-16; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-4-26](#); [45 IAC 2.2-3-27](#); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-8-12](#); Sales Tax Information Bulletin 4 (September 2011).

Taxpayer protests the Department's assessments of use tax on certain purchases.

STATEMENT OF FACTS

Taxpayer is an Indiana S-Corp that performs excavating work. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit of Taxpayer's business records for tax years 2011, 2012, 2013, and 2014. The Department determined that Taxpayer owed use tax for purchases by lump-sum contractors and purchases made without supporting documentation of sales tax paid. As a result, the Department assessed additional use tax on these purchases.

Taxpayer protested the use tax assessed on its purchases. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Use Tax - Imposition.

DISCUSSION

The Department's audit reviewed Taxpayer's "bank records, general ledgers, and purchase invoices for calendar years 2011 through 2014." As a result, under [45 IAC 2.2-4-26](#), the Department assessed additional use tax on Taxpayer's purchases of "diesel fuel; construction materials; consumable supplies; tools; repair parts for construction equipment and vehicles; and other miscellaneous purchases of tangible personal property where sales tax was not collected by the vendor." The Department also assessed Taxpayer additional tax under [45 IAC 2.2-3-27](#) for purchases made for which Taxpayer did not provide evidence that sales tax was paid at the time of purchase. Taxpayer disagrees with these assessments in part, stating that the majority of the purchases deemed subject to tax were "either exempt from sales or use tax, or previously taxed."

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of

State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). Tangible personal property purchased in a retail transaction is subject to use tax when the tangible personal property is "stored, used or otherwise consumed in Indiana . . . unless the Indiana state gross retail tax has been collected at the point of purchase." [45 IAC 2.2-3-4](#).

When sales tax is not paid as a part of a retail transaction, use tax will be imposed unless the purchase is eligible for an exemption. A statute which provides a tax exemption is strictly construed against the taxpayer. Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). Thus, in applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Taxpayer claims that much of the work it performed during the tax years at issue "was for nonprofit entities . . . and for government entities." Taxpayer explains that the projects performed for government entities "were mostly brownfield projects where the [T]axpayer was a subcontractor, and the [T]axpayer never received exemption forms." IC § 6-2.5-5-16 exempts sales of tangible personal property from Indiana sales tax if the "person acquiring the property . . . is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state . . . and predominantly uses the property . . . to perform its governmental functions." However, such entities "must register with the Department and issue an exemption certificate to the seller" in order to purchase property exempt from tax. Sales Tax Information Bulletin 4 (September 2011), 20110928 Ind. Reg. 045110515NRA. Taxpayer argues that because nonprofit and government entities are exempt entities, purchases made for these projects are exempt from sales tax. However, Taxpayer never received exemption forms during these projects and did not present any exemption forms in the hearing. Therefore, Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of proving that the Department's assessment was incorrect.

Use of tangible personal property in Indiana may be exempt from Indiana use tax if the sales tax is paid or collected at the time of the purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). Under [45 IAC 2.2-3-27](#), "[a] person who stores, uses or consumes tangible personal property in Indiana may avoid paying the use tax to the Department if such person retains for inspection by the [Department] a receipt evidencing payment of the tax." Taxpayer argues that the audit assessed use tax on purchases for which Taxpayer paid sales tax at the time of purchase. Taxpayer did not provide receipts or evidence of sales tax paid for several purchases reviewed during the audit, thus the Department assessed additional use tax on these purchases. Taxpayer provided examples of vendor statements and invoices showing sales tax charged, but none of these statements could be tied to the purchases reviewed in the audit. Therefore, Taxpayer did not meet its burden under [IC 6-8.1-5-1\(c\)](#).

FINDING

Taxpayer's protest is respectfully denied.

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